IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 28315 of 2006(U)

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PETITIONER:

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SHAHZAD KHAN,
58, 84/86, KAMMATH LANE,
T.D.ROAD, ERNAKULAM.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.A.G.GIRISH KUMAR

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM.

3. THE DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU,
PMG, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM.

4. THE COMMISSIONER OF POLICE,
ERNAKULAM.

5. THE SUPERINTENDENT OF POLICE,
CRIME BRANCH, CRIME INVESTIGATION DEPARTMENT,
ERNAKULAM.

6. THE CIRCLE INSPECTOR OF POLICE,
CITY TRAFFIC POLICE STATION,
ERNAKULAM.

7. SRI.MURALEEDHARAN,
SUB INSPECTOR OF POLICE,
CITY TRAFFIC POLICE STATION,
ERNAKULAM.

8. SRI.JOHN,
POLICE CONSTABLE,
CITY TRAFFIC POLICE STATION,
ERNAKULAM.

BY GOVERNMENT PLEADER SRI.S.U. NAZAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**R. BASANT, J.**

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**W.P.(C) NO. 28315 OF 2006-U**

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**Dated this the 20th day of February, 2007**

**JUDGMENT**

The grievance of the petitioner is that no effective investigation is being conducted into the crime registered in respect of a road traffic accident. The petitioner was the rider of a motor cycle and a friend/employee of his was the pillion driver. There was an accident involving a K.S.R.T.C. bus and the motor cycle which the petitioner was riding. The petitioner suffered serious injuries and one of his legs had to be amputated. The pillion rider succumbed to his injuries. Crime was registered under Section 304A I.P.C. It was registered not on the basis of any complaint by any one, but on receipt of intimation of death in a road traffic accident from the hospital. Investigation was conducted. The petitioner is deeply dissatisfied with the investigation that was conducted.

2. By order dated 14/11/2006 this Court directed that the Assistant Commissioner of Police under the supervision of

the Commissioner of Police must conduct the investigation. A report was filed by the Commissioner of Police about the investigation that was conducted. The Case Diary was placed before me for my perusal.

3. In the course of initial investigation, the first Investigating Officer appears to have gravitated to the conclusion that the accident occurred when the two wheeler which the petitioner was riding attempted to over take the K.S.R.T.C. bus along the left hand side of the bus and tried to swerve on seeing a cyclist coming in the opposite direction. The said conclusion on the face of it does not appear to be inspiring as the accident is shown to have been taken place almost on the western half of the road lying north – south when both vehicles proceeding from south towards north. Later, in the course of investigation, the Investigators appear to have changed their stand and they put forward the suggestion that the petitioner was attempting to over take the K.S.R.T.C. bus along the right hand side of the bus and then the motocycle which the petitioner was riding had fallen on its left on seeing the bicycle coming in the opposite direction. The petitioner appears to have advanced a version that he was proceeding in front and the bus had come and hit on the rear of the vehicle in which he and the

pillion rider were travelling. The cyclist has not been ascertained and identified yet. The report of the Motor Vehicle Inspector suggests that there was no hard impact between the K.S.R.T.C. bus and the two wheeler which the petitioner was riding.

4. The Assistant Commissioner of Police, who under the supervision of the Commissioner of Police, conducted the investigation also appeared to endorse the conclusion that the negligent riding of the petitioner was responsible for the accident. The petitioner has no access to the C.D.; but he through his counsel urged that the conclusions were not reached properly and after exhaustive investigation by the Investigators. This Court, as requested by the learned counsel for the petitioner, has gone through the C.D. in detail.

5. The C.D. has been subjected to close and anxious scrutiny by me. I come across a specific statement by the police officials who reached the scene immediately after the occurrence recorded in page 141 of the C.D. that there were tyre marks of the K.S.R.T.C. vehicle involved in the case lying in the north – south and east – west direction at the scene of the crime. Quite surprisingly these tyre marks are not noted in the scene mahazar. Most intriguingly, none of the Investigators

appear to have worked on this clue at all. The information available in page 141 of the C.D. has not been tapped by any of the Investigators.

6. The learned Public Prosecutor fairly submits that the perusal of the entire C.D. does not reveal that this clue – the presence of the tyre marks has been pursued by any of the Investigators.

7. To sum up, I am totally dissatisfied with the investigation conducted. I am shocked to note that in spite of specific directions issued by this Court this is the quality of investigation rendered in this case. I am perfectly convinced that it will be dangerous to permit the City Traffic Wing to continue with the investigation. I am satisfied that a more competent, careful, cautious and forensic and skillful investigation has to be conducted. The petitioner was hospitalised for a long period of time and he could not promptly point out all the relevant details to the Investigators. A true, correct and proper investigation is the right of every individual involved in the crime and notwithstanding the fact that the present Investigators appear to be sailing to a conclusion that the petitioner is guilty, I am satisfied that the investigation deserves to be handed over to another competent agency.

Directions to that effect have to be issued in this petition though the proceedings are initiated by the prospective accused identified by the present Investigators.

8. In the result, this writ petition is allowed. The investigation into the crime shall be continued and completed by the Superintendent of Police, Crime Branch C.I.D. The matter shall be investigated into in detail by the Superintendent of Police, CB C.I.D. and final report shall be filed as expeditiously as possible – at any rate, within a period of six months from this date. Necessary orders to this effect shall be issued by the 2nd respondent forthwith. Report of the action taken shall be filed before this Court within a period of 30 days with copy to the petitioner's counsel. The learned Public Prosecutor shall convey this direction to the 2nd respondent forthwith.

8. Issue a copy of this judgment to the learned Public Prosecutor.

**(R. BASANT, JUDGE)**

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